REGAL DODGE 665

Regal Dodge, Inc. and Machinists Automotive Trades District Lodge 190, Local Lodge 1101, International Association of Machinists and Aerospace Workers, AFL-CIO, Petitioner. Case 32-RC-4261

October 8, 1997

DECISION AND DIRECTION

BY CHAIRMAN GOULD AND MEMBERS FOX AND HIGGINS

The National Labor Relations Board has considered a determinative challenge in an election held on April 11, 1997, and the Regional Director's report recommending disposition of it. The election was conducted pursuant to a Stipulated Election Agreement. The tally of ballots showed 2 for and 1 against the Petitioner, with 1 challenged ballot, a sufficient number to affect the results.

The Board has reviewed the record in light of the exceptions and brief and has adopted the Regional Director's findings and recommendations.

We adopt the Regional Director's recommendation to overrule the challenge to employee Hasegawa's ballot. The Regional Director's investigation revealed, inter alia, that the Employer asked Hasegawa to delay his departure for a new job until it could find a replacement, that the Employer offered him, as an incentive, the same rate he would receive in his new job, and that the Employer advertised for a replacement prior to the election. The Regional Director concluded that Hasegawa was working on the eligibility date and on the date of the election and that, therefore, he was eligible to vote under the Board's eligibility test, as set forth in *Roy N. Lotspeich Publishing Co.*, 204 NLRB 517 (1973).

Even considering the matter of the alleged "bribe" in the context here of a challenged ballot, we find that the Petitioner has not presented sufficient evidence to warrant a hearing. See *NLRB v. VSA*, *Inc.*, 24 F.3d 588, 596–598 (4th Cir. 1994), enfg. 309 NLRB No. 188 (Dec. 31, 1992) (not reported in Board volumes) (a party's disagreement with the interpretation or infer-

ences placed on facts by the Regional Director is not sufficient to warrant a hearing). In this regard, we note that the Regional Director's findings of fact as to the circumstances of the Employer's arrangement with Hasegawa are not contested by the Petitioner and are not in conflict with any other findings in the Regional Director's report, or with any evidence submitted by the Petitioner. Contrary to our colleague, we do not agree that the Regional Director, in resolving this issue, has made a credibility resolution. Rather, in finding a hearing warranted here our colleague, at bottom, relies on the Petitioner's characterization of the uncontested facts as amounting to a "bribe."

DIRECTION

IT IS DIRECTED that the Regional Director for Region 32 shall, within 14 days from the date of this Decision and Direction, open and count the ballot of Glen Hasegawa. The Regional Director shall then serve on the parties a revised tally of ballots and issue the appropriate certification.

MEMBER FOX, dissenting.

Contrary to my colleagues and the Regional Director, I find that the Petitioner could properly raise the bribery issue as a challenge to the voting eligibility of employee Glenn Hasegawa. See, e.g., Einhorn Enterprises, 279 NLRB 576, 596-597 (1986); Central Delivery Service of Massachusetts, 225 NLRB 758, 759 (1976); Value City Furniture of Springdale, 222 NLRB 455, 460 (1975). I further find that the Petitioner has presented sufficient evidence to warrant a hearing. In recommending that the challenge be overruled, the Regional Director has in essence credited the Employer's asserted explanation for Hasegawa's remaining on the Employer's payroll until after the election at a higher rate of pay. Such action by the Regional Director, in the absence of a hearing, is error. See National Labor Relations Board Rules and Regulations, Section 102.69(d); Frontier Hotel, 265 NLRB 343 fn. 4 (1982). Accordingly, I would direct a hearing on this challenged ballot.